

House Bill 513

By: Representative Cole of the 125<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 9 of Title 48 of the Official Code of Georgia Annotated, relating to motor fuel and road taxes, so as to change certain provisions regarding definitions; to provide for inspections; to provide for retention of samples; to provide for penalties for refusal to allow inspections; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Chapter 9 of Title 48 of the Official Code of Georgia Annotated, relating motor fuel and road taxes, is amended by revising Code Section 48-9-2, relating to definitions regarding motor fuel and road taxes, to read as follows:

"48-9-2.

As used in this article, the term:

~~(1)~~(1) 'Agricultural field use' means the use of motor fuel of a type other than gasoline by vehicles licensed under paragraph (.1) of Code Section 40-2-150. Such term shall include the incidental movement over a highway as well as all off-road operations.

~~(1)~~(2) 'Aviation gasoline' means gasoline that is designed and sold for use solely for aviation purposes in aircraft engines.

~~(2)~~(3) 'Aviation gasoline dealer' means any person who sells or consumes aviation gasoline for aviation purposes only.

~~(3)~~(4) 'Compressed petroleum gas' means all liquid petroleum products composed of propane, propylene, butanes, butylenes, or any mixture thereof as determined by test method ASTM D-216370, Natural Gas Processors Association Liquefied Petroleum Specifications, 1970 revision and any subsequent revision.

~~(4)~~(5) 'Consumer distributor' means any person who has both highway and nonhighway use of motor fuel of a type other than gasoline and who elects to become licensed as a distributor to obtain the exemption allowed by this article.

~~(5)~~(6) 'Distributor' means every person other than the United States or any of its agencies who:

(A) Produces, refines, prepares, distills, manufactures, blends, or compounds motor fuel in this state;

(B) Makes the first sale in this state of any motor fuel imported into this state after the motor fuel has been received in this state;

(C) Consumes or uses in this state any motor fuel imported into this state before the motor fuel has been received by any other person in this state;

(D) Purchases motor fuel for export from this state;

(E) Consumes or uses motor fuel of a type other than gasoline for both highway and nonhighway use and who elects to become licensed as a distributor to obtain the exemption allowed by this article;

(F) Sells motor fuel of a type other than gasoline to consumers who have no highway use of such fuel and who elects to become licensed as a distributor to obtain the exemptions allowed by this article; ~~or~~

(G) Imports motor fuel into this state for production, refining, preparation, distilling, manufacturing, blending, compounding, consumption, or use within this state; or

(H) Is a supplier, including a permissive supplier unless specifically provided otherwise, who produces, supplies, or sells fuel grade alcohol or alcohol derivative substances in this state, produces or sells fuel grade alcohol or alcohol derivative substances for import to this state into a terminal, or acquires upon import by truck, rail car, or marine vessel into a terminal in this state fuel grade alcohol or alcohol derivative substances.

~~(5.1)~~(7) 'Dyed fuel oils' means any fuel oil dyed pursuant to regulations issued by either the United States Environmental Protection Agency or the Internal Revenue Service.

~~(5.2)~~(8) 'Export and import' means:

(A) When motor fuels are sold for export and delivered across the boundaries of this state by or for the seller, such action is presumed to be an export from the place of origin and an import into the destination state or country by the seller; and

(B) When motor fuels are purchased for export and transported across the boundaries of this state by or for the purchaser, such action is presumed to be an export from the place of origin and an import into the destination state or country by the purchaser.

~~(6)~~(9) 'Fuel oils' means all liquid petroleum products including, but not limited to, kerosene, but does not mean gasoline, compressed petroleum gas, diesel, biodiesel, or special fuel.

~~(7)~~(10) 'Gasoline' means all products commonly or commercially known or sold as gasoline.

~~(8)~~(11) 'Highway use' means:

(A) The consumption or use of motor fuel other than gasoline in or upon a motor vehicle which is operated on the public highways;

(B) The placing of motor fuel other than gasoline in the running tank or power cells of a motor vehicle designed for use and used on the public highways; or

(C) The use of motor fuel other than gasoline in the construction, reconstruction, maintenance, or repair of public highways.

~~(8.1)~~(12) 'Loading rack' means that part of a terminal facility by which motor fuels are physically removed from the terminal facility into transport tank trucks, marine vessels, or rail cars.

~~(9)~~(13) 'Motor fuel' means any source of energy that can be used for propulsion of motor vehicles on the public highways including, but not limited to:

(A) Gasoline;

(B) Fuel oils;

(C) Compressed petroleum gas; and

(D) Special fuel.

~~(10)~~(14) 'Motor vehicle' means:

(A) Every self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways; and

(B) Any other machine or mechanical contrivance using motor fuel to the extent that the machine or contrivance is operated upon the public highways.

~~(11)~~(15) 'Public highway' means every way or place of whatever nature generally open to the use of the public as a matter of right for the purpose of vehicular travel even though such way or place may never have been so open or may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

~~(12)~~(16) 'Purchase' means any acquisition of ownership.

~~(13)~~(17) 'Received,' in addition to its ordinary meaning, means:

(A) Motor fuel produced, refined, prepared, distilled, manufactured, blended, or compounded within this state; or

(B) Motor fuel imported into the territorial boundaries of this state which is held for sale or use or is stored in any receptacle which has withdrawal facilities for sale or use in this state.

~~(14)~~(18) 'Sale' means any exchange, gift, consignment, bailment, or any other accounted for or unaccounted for disposition.

~~(15)~~(19) 'Special fuel' means all sources of energy other than gasoline, fuel oils, or compressed petroleum gas.

(15.1)(20) 'Terminal' means a motor fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which motor fuels may be removed by either a loading rack or user pipeline. However, the term does not include any facility at which petroleum blend stocks and additives are used to manufacture products other than motor fuel and from which no motor fuel is removed.

(16)(21) 'Transport tank truck' means any tank truck used to transport motor fuel in bulk quantities."

## SECTION 2.

Said chapter is further amended by revising Code Section 48-9-9, relating to reports of motor fuel deliveries, to read as follows:

"48-9-9.

(a)(1) A report of all deliveries of motor fuel shall be made to the commissioner by:

(A) Each of the following companies and carriers transporting motor fuel either in interstate or in intrastate commerce to points within this state:

(i) Every railroad company;

(ii) Every street, suburban, or interurban railroad company;

(iii) Every pipeline company;

(iv) Every water transportation company;

(v) Every common or contract carrier; and

(vi) Every operator of a terminal;

(B) Every person transporting motor fuel by whatever manner to a point in this state from any point outside this state; and

(C) Every person transporting motor fuel from a point in this state to a point outside this state.

(2) Each report required by this subsection shall be:

(A) Made under oath on forms prescribed by the commissioner; and

(B) Filed by the twentieth day of each calendar month to cover the preceding calendar month's activities.

(b) The commissioner shall assign a tank registration number to each person transporting motor fuel over the public highways or navigable waters of this state and shall furnish a separate tank identification card for each transport tank truck or vessel operated within this state. The registration number shall be displayed continuously and conspicuously on the truck, tank, or vessel operated by persons transporting motor fuel. The identification card issued for each such truck or vessel shall be available for inspection by the commissioner's agents and shall remain with the truck or vessel when transporting motor fuel on the public

highways or navigable waters of this state. Tank identification cards are not transferable and are valid only for the transport tank truck or vessel for which issued.

(c) No person shall transport motor fuel in this state except in a transport tank truck or vessel which is visibly marked on each side and on the rear with the words 'Motor Fuel,' 'Flammable,' or other indication of the type of product being transported suitable to the commissioner or other regulatory agencies, together with the name and address of the owner of the transport tank truck or vessel and the tank registration number. This subsection shall not apply to vehicles or vessels transporting motor fuel contained in their running tanks and used solely for their propulsion or to vehicles or vessels transporting motor fuel of not more than five gallons for emergency purposes.

(d)(1) Every person transporting motor fuel over the public highways or navigable waters of this state shall have in such person's possession an invoice, bill of sale, or other document which identifies:

(A) The true name and address of the person from whom the motor fuel was received;

(B) The number of gallons originally received;

(C) The true name and address of every person who has received any part of the fuel;

(D) The number of gallons delivered to such persons; and

(E) The city or county and state of destination as represented to the transporter by the person who arranged the transportation.

(2) Failure to produce such invoice, bill of sale, or other document when demanded or failure of a document produced upon demand to meet the requirements of this Code section shall be prima-facie evidence of a violation of this article.

(3) The transporter shall leave a copy of the invoice, bill of lading, or other documentation with each person who receives the fuel into bulk storage for resale.

(e) Delivery of motor fuel from a transport tank truck or vessel directly into the fuel tank of any motor vehicle in this state is prohibited except in cases of emergency.

(f) Every person purchasing or otherwise acquiring motor fuel in bulk quantities for sale, use, or other disposition in this state who is not required to be licensed as a distributor by this article may be required to file by the twentieth day of each calendar month a report on forms prescribed by the commissioner to account for all such motor fuel acquired during the preceding calendar month. Every operator of a terminal who receives motor fuel in bulk for storage shall include on a report to the commissioner the names of all persons who are storing fuel in the terminal and the quantity received, stored, and delivered during the month on behalf of each such account. The report shall specify what portion of the deliveries recorded for each account were within the terminal to others and what portion was removed from the terminal facility via the loading rack. The report shall identify the

city or county and state of destination of the deliveries as reflected on the bills of lading issued by the terminal operator.

(g) Any person storing dyed motor fuel for use by that person or another person shall mark the storage facility for the dyed motor fuel clearly indicating the fuel is not to be used to operate a highway vehicle. The storage facility shall be marked 'Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use' or 'Dyed Kerosene, Nontaxable Use Only, Penalty for Taxable Use.' A person who intentionally fails to mark the storage facility as required by this subsection is subject to a civil penalty equal to the excise tax and all other motor fuel taxes at the tax rate on the inventory held in the storage tank at the time of the violation."

### SECTION 3.

Said chapter is further amended by revising Code Section 48-9-12, relating to powers of the state revenue commissioner regarding motor fuel and road taxes, to read as follows:

"48-9-12.

(a) In addition to his other duties and responsibilities to administer this article, the commissioner is empowered and authorized to do, but is not limited to, the following:

(1) Deny or cancel any distributor's or aviation gasoline dealer's license if the commissioner is of the opinion that the license application is not filed in good faith or is filed by some person as a subterfuge for any other person;

(2) Cancel any distributor's or aviation gasoline dealer's license for failure to comply with any provision of this article or with rules and regulations adopted by the commissioner;

(3) Cancel a license upon receipt of a written request from any distributor or aviation gasoline dealer licensed under this article to cancel the license issued to the distributor or aviation gasoline dealer. The distributor or aviation gasoline dealer shall surrender to the commissioner the license certificate issued;

(4) Cancel the license of a distributor if, upon investigation or information obtained from the distributor's monthly report, the commissioner ascertains that any distributor to whom a license has been issued is no longer engaged in the receipt, use, or sale of motor fuel and has not been so engaged for a period of six months, or no longer qualifies as a distributor under this article. Written notice of the cancellation shall be mailed to the last known address of the distributor, in which event the license certificate previously issued to the distributor shall be surrendered to the commissioner;

(5) Reinstate a canceled license when information is provided at a hearing or otherwise within 30 days of cancellation which satisfies the commissioner that the license should be reinstated;

(6) Decline to approve a refund payment until the applicant has complied with the laws of this state if in the opinion of the commissioner the refund application filed by an applicant contains a false statement or if the applicant is indebted to the state;

(7) Suspend the right of the refund privilege of a person for a term of not more than 12 months if the commissioner concludes that any retail dealer, any person using gasoline for agricultural purposes, or any foreign government official has willfully violated this article or has willfully failed to comply with the rules and regulations adopted by the commissioner for the administration of this article;

(8) Waive the bond and the report required of a licensed distributor of fuel oils, compressed petroleum gas, or special fuel if the distributor has no taxable sales of the fuel and his receipts do not exceed 12,000 gallons per year and with respect to such distributors waive requirements for record keeping on sales that do not exceed 25 gallons in one transaction;

(9) Enter into agreements with appropriate authorities of other jurisdictions having statutes similar to this article for the cooperative audit of any taxpayer's reports and refunds. In performing the audits or parts of audits, the officers and employees of other jurisdictions shall be deemed authorized agents of the commissioner for the agreed upon purpose; ~~and~~

(10) Appoint revenue agents for the enforcement of this article. The appointed agents shall have all powers of a police officer of this state when engaged in the enforcement of this article; and

(11) Authorize agents to detain any motor vehicle, train, or marine vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment may continue for a reasonable period of time, not to exceed one hour, necessary to determine the amount and composition of the motor fuel. Such authorized agents or employees may take and remove samples of motor fuel in reasonable quantities necessary to determine its composition.

(b) The commissioner shall notify the distributor or aviation gasoline dealer in writing of any cancellation of a license as provided in subsection (a) of this Code section by certified mail or statutory overnight delivery to the last known address of the distributor or aviation gasoline dealer appearing in the files of the commissioner.

(c) In the event that the license of any distributor is canceled by the commissioner under the authority of this article, the commissioner shall hold the bonds of the distributor for a period of three years against any liabilities of the distributor. In no event shall any bonds surrendered remove any liability.

(d) The commissioner shall make the motor fuel tax records available for inspection by the public at reasonable times. The commissioner may charge a fee for special requests of prepared information based on the cost to prepare the information.

(e) When any distributor neglects or refuses to file the required reports or fails to maintain auditable records that account for tax exemptions taken on motor fuel as required by this article or files an incorrect or fraudulent report, the commissioner or his authorized agents shall determine from the best information available the number of gallons of motor fuel to be taxed. The commissioner shall impose the tax, penalty, and interest due. Estimates by the commissioner or his authorized agents shall be prima-facie evidence of the claim of the state and the burden of proof to establish the accountability of motor fuel shall be on the distributor to show that the assessment is incorrect and contrary to law.

(f) Before the expiration of the time prescribed by this article for assessments and refunds of taxes, the commissioner or his delegates may enter into an agreement in writing with the taxpayer to extend such time. The period so agreed upon may be extended by subsequent agreements made in writing before the expiration of the period previously agreed upon.

(g) The commissioner shall prepare and furnish to each known selling licensed distributor a list showing the name and address of each licensed distributor of motor fuels as of the beginning of each fiscal year and shall thereafter during each year supplement the list monthly."

#### SECTION 4.

Said chapter is further amended by revising Code Section 48-9-17, relating to violations of provisions regarding motor fuel and road taxes, to read as follows:

"48-9-17.

(a)(1) With respect to this article, it shall be unlawful for any person to:

(A) Refuse or neglect to make any required statement, report, or return;

(B) Knowingly make, or aid or assist any other person in making, a false statement in a return or report to the commissioner;

(C) Knowingly collect or attempt to collect or cause to be paid to him or to any other person either directly or indirectly any refund of the tax without being entitled to the refund;

(D) Fail to remit the tax to the state;

(E) Engage in business in this state as a distributor without being licensed as required;

or

(F) Sell, import, or use any motor fuel which was purchased by such person from any person other than a duly licensed distributor and upon which the tax imposed and not exempted by law has not been paid; or



(G) Refuse to allow an inspection.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000.00 nor more than \$10,000.00 or by imprisonment for a term of not less than 30 days nor more than 12 months, or both. Each day or part of a day during which any person engages in business as a distributor without being the holder of an uncanceled license shall constitute a separate offense under this subsection.

(3) Any person who refuses to allow an inspection in violation of subparagraph (G) of paragraph (1) of this subsection may be penalized \$1,000.00 for each refusal. This penalty is in addition to other penalties or taxes that may be imposed upon that person or any other person liable for fuel excise taxes. The authorized agent for the state shall furnish an IRS Form 916 or similar document prepared by the department stating the purpose of the inspection and penalties for refusal to allow an inspection so requested.

(b)(1) It shall be unlawful for any person to purchase tax-exempt motor fuel from a licensed distributor for nonhighway use and to use or permit the motor fuel to be used for highway purposes.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000.00 nor more than \$10,000.00 or by imprisonment for not less than 30 days nor more than 12 months, or both.

(c)(1) It shall be unlawful for any person not required by this article to be licensed as a distributor of motor fuel but who is required to file reports as provided by this article willfully to fail to file the report by the twentieth day of the succeeding month for its activities or willfully to fail to remit in the monthly reports the data required by the commissioner for proper administration of this article.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00 for the first offense and not less than \$1,000.00 for each subsequent offense.

(d)(1) It shall be unlawful for any person to violate any provision of this article, including, but not limited to, record keeping, or to fail to do any other act required by this article.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000.00 or by imprisonment for not more than 12 months, or both.

(e)(1) It shall be unlawful for any person to import or export motor fuels across the boundaries of this state without a bill of lading from the terminal of origin or equivalent documentation setting out, in addition to the information required by subsection (d) of

Code Section 48-9-9, at least the location of the terminal of origin and state or country of destination. The form, procedure, acceptable equivalent documentation, and any additional information shall be set out in rules and regulations as adopted by the commissioner.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(f)(1) It shall be unlawful for any retail dealer, distributor, or bulk user in this state knowingly to accept delivery of motor fuel that is not accompanied by a bill of lading, invoice, or other shipping document, as specified in paragraph (3) of subsection (d) of Code Section 48-9-9, issued by the terminal operator which sets out on its face Georgia as the state of destination.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and become jointly liable with the distributor of the motor fuels for the taxes due under this article.

(3) In the event the shipment of motor fuel did not originate from a terminal whose operator is obligated to set out this information, the commissioner is authorized to adopt by rules or regulations equivalent documentation requirements. The commissioner is further authorized to adopt rules and regulations setting out procedures to amend such documentation should the shipment have to be diverted from its original destination."

#### **SECTION 5.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

#### **SECTION 6.**

All laws and parts of laws in conflict with this Act are repealed.